In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 727 of 2002

Date of Decision: September 6, 2006

Teja Singh

…Petitioner

Versus

Union of India & others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Bhim Sen Sehgal, Advocate, with
Mr. Rajesh Sehgal, Advocate,
for the petitioner.

Mr. Gurpreet Singh, Central Govt. Counsel,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of certiorari quashing orders dated 10.2.1975 (P-7), 20.1.1976 (P-9), 29.6.1987 (P-11), 8.3.2001 (P-12) and 18.8.2001 (P-14). A further prayer has been made to direct the respondents to grant the petitioner disability pension consisting of both service element and disability element for 40% disability from 13.9.1974 onwards for life. It has also been prayed

for grant of service element of pension from 5.10.1938 to 30.10.1946 for the first spell of service rendered by the petitioner in the Royal Indian Artillery and from 4.8.1948 to 25.2.1956 for the second spell of service rendered in the Indian Army and also w.e.f. 26.2.1956 to 12.9.1974 and thereafter from 13.9.1974 onward for life. It has still further been prayed that respondents be directed to bring the petitioner before the Resurvey Medical Board as the eye-sight of the petitioner is deteriorating and there is substantial increase in the percentage of his disability.

Few facts may first be noticed. The petitioner was enrolled in the Royal Indian Artillery on 5.10.1938 and was allocated the trade of MT Driver and after successful training he was inducted in the Army as Sepoy in 1939. The petitioner was demobilized from the Royal Indian Army on 13.10.1946 after having served for about 8 years and 8 days. He was re-enrolled in the Army w.e.f. 4.8.1948. While in service, the petitioner suffered from the eye disease which was diagnosed as 'CHRONIC TRACHOMA BOTH EYES' and consequently he was down graded to lower medical category 'CEE' temporary and thereafter the lower medical category of the petitioner was extended from time to time. Ultimately, on the recommendations of the Invaliding Medical Board, the petitioner was invalidated out of the military service on medical ground with 40% disability in the lower medical category 'CEE' permanent w.e.f. 25.2.1956. In this manner, the petitioner has served in the Royal Artillery w.e.f. 5.10.1938 to 13.10.1946 and in the Indian Army w.e.f. 4.8.1948 to

25.2.1956. The petitioner was granted disability pension (disability element + service element) from 26.2.1956 and it was extended from time to time upto 12.9.1974. The petitioner was brought before the Resurvey Medical Board on 22.8.1974, which was held at Military Hospital Jalandhar Cantt. The Resurvey Medical Board assessed the disability of the petitioner as 40% but the Chief Controller of Defence Accounts (Pension) reduced the same to be less than 20% and discontinued paying disability pension consisting of both service element as well as disability element to the petitioner from 13.9.1974 onwards. The petitioner thereafter made several representations to the respondent authorities for continuation of disability pension or in the alternative to grant service pension w.e.f. 13.9.1974 onwards as according to the petitioner he had rendered more than 15 years of service in army. The service element to the petitioner has been denied on the basis of Army Headquarter's letter dated 23.7.1957 that the earlier service was not countable towards the short service engagement. On 15.3.1975, the petitioner appealed to the appropriate authority against rejection of disability pension by reducing the percentage of disability by the CCDA(P) but the same was rejected by the Secretary, Ministry of Defence, vide order dated 30.1.1976 (P-9). Subsequent representations made by the petitioner have also met the same fate.

In the written statement the respondents have admitted the factual position with regard to invaliding the petitioner, initial grant of disability pension consisting of both the elements,

assessment of disability of the petitioner by the Re-survey Medical Board from time to time and stopping of disability pension w.e.f. 13.9.1974. The respondents have controverted the claim of the petitioner for grant of disability pension consisting of service element as well as disability element on the principal ground of delay as according to the respondents the petitioner has approached this Court after lapse of almost 32 years. It is also asserted that the Re-survey Medical Board, had assessed the disability as less than 20% and, therefore, the petitioner is not eligible for grant of disability pension. It has further been asserted that the petitioner had not put in required number of years of service entitling him to get service element of disability pension and he is not entitled to claim any amount by way of pension on the ceaseation of the disability. According to the respondents, the petitioner is not eligible for grant of service element because an individual is entitled to invalid pension/service element if the minimum period of qualifying service at his credit is 10 years.

Controverting the averments of the written statement, the petitioner also filed a replication.

At the hearing, learned counsel for the petitioner confined the claim of the petitioner only for the grant of service element w.e.f. 13.9.1974 and onward for life.

The question which arises for consideration in this petition is whether the petitioner is entitled to the grant of service element of disability pension after discontinuation of disability

element. Another question which would require determination is whether the claim made by the petitioner is barred by time.

Both the issues have been considered in detail in two similar writ petitions namely Dalip Singh v. Union of India and others (CWP No. 2611 of 2003) and Kehar Singh v. Union of India and others (CWP No. 18332 of 2003) which have been decided today vide separate detailed orders. Both the issues have been decided in favour of the petitioner in those cases. The matter being similar on facts and law, the same reasoning is adopted in the present case as well. Accordingly, the writ petition deserved to be allowed.

In view of the above, the petitioner is held entitled to the service element of pension for life as per the rates fixed by the Central Government from time to time from the date it was discontinued and the contrary orders dated 10.2.1975 (P.7), 20.1.1976(P.9), 29.6.1987 (P.11), 8.3.2001 (P.12) and 18.8.2001 (P.14) are hereby quashed. The respondents shall calculate the due arrears of the petitioner till date and disburse the same to him within three months from the date of receipt of a certified copy of this judgement. In case the arrears are not disbursed within the said period of three months, the entire arrears will carry interest at the rate of 12% from the date of expiry of three months till the date of payment. The respondents are also directed to regularly pay service element of disability pension to the petitioner every month without any break for whole of his life.

The writ petition is allowed in the above terms with no orders as to costs.

The office is directed to attach copies of the orders passed in the cases of Dalip Singh and Kehar Singh (supra) while issuing certified copy of this order.

(M.M. KUMAR)
JUDGE

September 6, 2006
Pkapoor